

Municipal Separate Storm Sewer System (MS4)
Frequently Asked Questions
Updated as of February 17, 2011

Below is a listing of questions asked by permittees and others in response to withdrawal of the 2008 MS4 general permits. The Department of Natural Resources and Environment (DNRE) has attempted to provide complete and accurate answers. This document may be amended at any time to add new questions/answers, or to further clarify answers.

Acronyms:

ACO – Administrative Consent Order
CCH – Contested Case Hearing
COC – Certificate of Coverage
DNRE – Department of Natural Resources and Environment
GP(s) – General Permit(s)
Plan – SWPPI (storm water pollution prevention plan) or SWMP (storm water management program)
SOC – Schedule of Compliance
WRD – Water Resources Division

Contested Case Hearing

- 1. Is the DNRE implying that the 2003 MS4 GPs are still valid? Did they expire?**

A final agency decision was not made on the 2008 MS4 GPs because of the CCH. The DNRE withdrew the 2008 MS4 GPs to resolve the CCH. Therefore, the 2003 MS4 GPs' authorization is extended until new permits are issued and in effect. In accordance with the Administrative Procedures Act, permit coverage was extended to those permittees that timely applied for reissuance of their authorization.

Please note that the CCH process (an administrative process of challenging permit conditions in a new or modified permit) is different than the litigation process that is ongoing.

- 2. We had permit coverage under one of the 2008 MS4 GPs. Were the 2003 MS4 GPs actually in effect during the period of 2008 – 2010 since no final agency decision was made on the 2008 MS4 GPs?**

The 2008 MS4 GPs were in effect until they were withdrawn on November 30, 2010. They were in effect because there was not a final agency decision and the 2008 MS4 GPs were not stayed during the CCH. Permittees that contested the 2008 MS4 GPs remained covered by the 2003 MS4 GPs.

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Litigation

3. Has the litigation involving the 2008 MS4 GPs ended?

No. There is an ongoing case in circuit court.

4. As the DNRE moves forward with the stakeholders group, will consideration be given to seek state funding under the Headlee Amendment? What about the Headlee Amendment and rule promulgation?

Since this is an issue in the ongoing litigation, the DNRE has no comments at this time.

Approved Plan

5. Some components of our 2008 plan were difficult to meet. Can we change back to our 2003 plan?

Yes. If a permittee wishes to update their approved plan, they may do so at anytime in accordance with its 2003 MS4 general permit coverage. The updated plan shall be provided to the DNRE, WRD's district compliance staff. In accordance with the 2003 MS4 GPs, DNRE approval is required prior to implementation. Permittees are required to follow their currently approved plan until a new plan is approved.

6. We submitted an alternative with our plan under the 2008 GP. If we did not receive approval, should we wait for the district to comment or should we implement it?

If an alternative was submitted with a plan under the 2008 MS4 GPs and the alternative was not approved, then the entire plan is not approved (alternatives require specific action by the DNRE, and you should have received notification from the DNRE if it was approved). The permittee will need to follow the last approved plan.

The DNRE will not be taking action on alternatives which were submitted under the 2008 MS4 GPs that were not approved, because the 2008 MS4 GPs are no longer valid.

Also see answers to the following question.

7. District staff commented on the plan we submitted under the 2008 GP, noting corrections that were needed. Is that plan approved?

- The 2008 MS4 GPs provided for automatic approval of plans upon submittal provided the plan met the permit requirements. DNRE staff had the ability to

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comment on plans that were deficient, and give the permittee an opportunity to correct the deficiency.

- If a permittee submitted a plan prior to November 30, 2010, and DNRE staff did not comment on it prior to November 30, 2010, that plan is approved (assuming it did not include alternatives). The permittee shall implement the approved plan until a modified plan is approved (see FAQ No. 5 above for information on how to modify an approved SWPPI/SWMP).
- If a permittee submitted a SWPPI/SWMP prior to November 30, 2010, and the DNRE staff indicated that it needed corrections and
 - Prior to November 30, 2010, the permittee submitted corrections that addressed the DNRE's comments, that SWPPI/SWMP is approved. However, if the permittee wishes to update its approved plan, it may do so anytime in accordance with its 2003 MS4 general permit coverage.
 - The permittee did not submit corrections prior to November 30, 2010, that SWPPI/SWMP is not approved. The permittee shall implement the approved SWPPI/SWMP under its 2003 MS4 general permit coverage.
- There are no partially approved plans under the 2008 MS4 GPs. If the 2008 required plans were not entirely approved or included alternatives that were not approved, then the permittee shall implement the approved plan under their 2003 MS4 permit coverage.

8. I do not understand how there can be automatic approval of a plan submitted under a permit that was revoked.

The 2008 MS4 GPs were not revoked, they were withdrawn. A final agency decision was not made on the permits because they were contested. The permits were in effect until they were withdrawn. Any plans submitted while a permittee was covered under that permit are approved if the submission met the criteria stated in FAQ No. 7. If a permittee wishes to update their approved plan, they may do so at anytime in accordance with its 2003 MS4 general permit coverage.

9. We had a watershed permit in 2003 and a jurisdictional permit in 2008. Which plan do we follow?

Follow the last approved plan. However, if the permittee wishes to update its approved plan, it may do so anytime in accordance with its 2003 MS4 general permit coverage. Permittees will be expected to update plans during the next required SWPPI update. If you wish to switch permit coverage, see FAQ No. 28 for information on how to do that.

10. If our 2003 plan was approved, are we still required to submit updates to the district?

Yes, you'll need to follow all requirements of your 2003 MS4 GPs coverage, including requirements to periodically update your plan.

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Permit

11. Will we get a new COC if the reporting dates are incorrect?

You will not get a new COC. We will be relying on the previously issued authorization (in this case, the 2003 MS4 GP and COC). The reporting date will correspond to those established under the 2003 MS4 GP/COC.

12. Does the 2003 permit have an indefinite expiration date? Will it expire in 2013?

The 2003 MS4 GPs are expired. A final agency decision was not made on the 2008 MS4 GPs because they were contested. Therefore, the permittees will continue to have an authorization to discharge storm water under their 2003 MS4 GPs until a new permit(s) is issued and in effect, provided the permittee made timely application to continue the authorized discharge.

Schedule of Compliance

13. For permittees that were switched from their coverage under the 2008 MS4 GPs back to their coverage under the 2003 MS4 GPs, how will the DNRE address annual reports that were due on dates soon after the withdrawal of the 2008 MS4 GPs?

The DNRE will exercise enforcement discretion and will not require annual reports prior to April 1, 2011.

Please note that the first annual report required will need to document activities and accomplishments of the permittee since their last report, and in some cases this may be more than a 12-month period.

14. The 2008 approved plan included a schedule. Do we have to go back to the 2003 permit cycle schedule?

All future SOC's established under the 2008 MS4 GPs will be reset to the 2003 permit requirements. Annual reports will be required (in accordance with the 2003 MS4 GPs and COCs). The DNRE will be in contact with all permittees regarding their schedules.

15. Do we need to meet future SOC's established by the 2008 MS4 GPs?

No, all future schedules under the 2008 MS4 GPs are no longer valid. We are in the process of reestablishing schedules under the 2003 MS4 GPs.

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Compliance

16. What about a watershed-wide Public Education Plan (PEP) – they are not mentioned in the 2003 MS4 general permit?

Nothing in the permits prohibits permittees from working together on permit requirements. If your approved PEP does not comply with the 2003 MS4 general permit, you will need to update it in accordance with the dates specified in the 2003 MS4 GPs and your complimenting COC.

17. The Postconstruction Control requirements in the 2008 MS4 GPs had a lot of detail. How is the DNRE going to approach Postconstruction Controls under the 2003 MS4 GPs?

The 2003 MS4 GPs require postconstruction controls. For the watershed GP, the reference is Part I.B.2.a.1)c), page 11 of 28; and for the jurisdictional GP, the reference is Part I.B.4., page 8 of 25. Permittees will need to comply with the requirements established in the 2003 MS4 GPs.

18. Is there latitude on permit compliance because of the confusion caused by switching from the 2008 MS4 GPs to the 2003 MS4 GPs?

The DNRE will work with permittees to obtain compliance quickly, and exercise enforcement discretion where appropriate. It is expected that plans will be updated no later than the dates required by the GPs and COCs.

19. The requirements for the implementation of the plans are significant and costly – any suggestions how to proceed in the interim?

Permittees are required to comply with all aspects of their permit authorization. Because we do not know what the future permits will require or when they will be issued, permittees must implement actions necessary to comply with the current permits. District compliance staff are available to work with permittees to address specific issues.

20. Regarding postconstruction control alternatives (such as offsets and storm water credits) that were submitted as alternatives under the 2008 MS4 GPs, should we go forward with ordinances or should we resend our plans to the districts for approval?

If the alternative was not approved before November 30, 2010, it may be resubmitted to the DNRE for review under the 2003 permit requirements. If the alternative was approved, the permittee should take actions to meet the plan requirement, or alternatively, if the permittee wishes to update their approved plan, they may do so anytime in accordance with its 2003 MS4 general permit coverage.

21. Are the guidance documents for the 2008 permit null and void?

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Compliance Assistance documents were developed to assist permittees covered by the 2008 MS4 GPs. The 2008 MS4 GPs have been withdrawn. As such, the Compliance Assistance documents may not meet all the requirements of the 2003 MS4 GPs. The documents are only intended for guidance. If you have any questions about these documents and how they relate to compliance with the 2003 MS4 GPs, please contact the DNRE, WRD, district compliance staff.

22. Does the DNRE plan to suspend audits or other compliance inspections until a new permit is issued?

No. Audits and other compliance oversight activities, including compliance assistance, will continue.

23. The 2008 permit addressed Total Maximum Daily Load (TMDL) requirements but the 2003 permit did not directly mention TMDLs. Do we need to address TMDLs in our plans?

The 2003 permits addressed TMDLs and required permittees to take action for known water quality problems (see Part I.B.1., page 9, of the watershed GP; see Part I.B., page 5, of the jurisdictional GP). When a TMDL is approved, permittees are required to review the TMDL and determine what actions they will take to meet their obligations under the permit and the approved TMDL.

24. Our 2008 application identified several/many new outfalls. Will the DNRE still recognize them?

Yes. This type of information provided with your application will be considered as an update to previous information that was provided.

25. The 2003 permit did not require some actions that the 2008 permit did – how do we proceed?

Permittees should follow their approved plan, and update those plans as appropriate to comply with their current permit coverage by the date specified in the GPs and COCs. In most cases, actions taken to comply with the requirements of the 2008 MS4 GPs will comply with the 2003 MS4 GPs. However, there are instances where the 2003 permit requirements are not as lenient as the 2008 GP. For example, the 2008 permit allowed a period of time to complete the identification of discharge points, but the 2003 permit did not. Contact your district compliance staff for specific questions or concerns.

26. If a large regional group submitted an alternative approach that was not approved under the 2008 MS4 GP prior to withdrawal of the 2008 MS4 GPs, how should the alternative approach be submitted for review and approval?

If you believe that the alternative meets the minimum requirements of the 2003 GP, then submit the proposal to the district office and identify all permittees that wish to be covered by the approach. The DNRE will coordinate reviews of

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proposals as necessary. The alternative approach will be treated as an update to the permittee's approved plan. Approval is required by the DNRE.

- 27. How is permit coverage affected if an entity was issued a COC directly under the 2003 permit, but became nested under another permittee's authorization under the 2008 permit? Can the nesting arrangement be retained now that coverage has reverted to the 2003 permit, or must the nested entity revert to being a primary permittee rather than a nested entity?**

Provided a written nested jurisdiction agreement was in place under the 2008 permit, the permittee that became nested under the 2008 permit may remain nested. The permittee providing permit coverage will need to update its plans as appropriate.

Switching Permit Coverage

- 28. My community had a jurisdictional permit in 2003 and a watershed permit in 2008? Which permit do I follow?**

You are now under the 2003 jurisdictional GP. The DNRE will allow changing of permit requirements from the watershed to jurisdictional or jurisdictional to watershed through entry of an ACO if both the DNRE and the permittee agree to the permit language in writing (without penalty, provided you comply with the requirements of the ACO). Please contact your district compliance staff if you wish to pursue this.

New Permit

- 29. There seems to be some big changes coming from the federal government in 2012 with regards to storm water. Should the DNRE wait and see what happens at the federal level before it starts a new permit process?**

The federal rule making process can take years. When, and if, new rules are promulgated, it may take several more years before the state promulgates rules. Because of this uncertainty, permits are developed based on the current rules, and generally are not delayed waiting for United States Environmental Protection Agency action on federal rules.

- 30. What is the timeframe for the development of a new MS4 permit?**

This is unknown at this time. A stakeholders group is being formed. The group will explore both permit requirements and mechanisms to provide coverage. Please contact Mike Bray if you wish to participate (braym@michigan.gov).

- 31. Is it the intent of the DNRE to issue 5-year permits or just cover the next few years?**

There has been no decision made at this point. We generally issue 5-year

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permits in order to minimize impacts to the DNRE and permittees. We will consider this in determining how to effectively move forward with the MS4 permits.

32. Will the new permits just end up looking the same way as the 2008 general permit?

We do not know what the new permit will look like. It needs to go through the permitting process, including taking public comment.

33. If the DNRE is considering individual permits, does that signal an end to the 'watershed' concept?

The DNRE is considering all options to authorize discharges, including individual permits. Watershed concepts can proceed without specific requirements in general permits.

34. Will the DNRE now be willing to consider a watershed approach where you have not previously supported them (due to lack of regulated stakeholders that were committing to the watershed concept)?

Watershed approaches can be undertaken by permittees regardless of their permit coverage. Generally for coverage under the 2003 watershed GP, there needed to be a minimum threshold of interest by the regulated parties before the watershed permit would be authorized.

35. COCs were hard to issue, but would it not be more time consuming to issue individual storm water permits?

The DNRE is considering all options to provide permit coverage. The amount of time needed to issue permit authorizations is one area that will be considered.

36. Has the DNRE considered consolidating wastewater treatment plant permits and storm water permits?

Because those permit requirements are dramatically different, we do not anticipate doing that. But we are open to consider that on a case-by-case basis. Permittees that are interested in this should specifically request this be considered.

Rules

37. Will the DNRE consider going to the legislature to request that the ban from rulemaking be lifted?

The DNRE is required to follow the existing rules. The DNRE does not have

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rulemaking authority under Part 31. Until that prohibition changes, no rule changes will be pursued.

38. Federal rules allow for waivers. Has the DNRE considered them?

Yes, the DNRE has considered them, but did not include them when the state rules were promulgated. If the rules are reopened, we would consider waivers again.

39. Is the DNRE following the current rules or do we plan to seek changes to Part 21 Rules?

The DNRE is required to follow the existing rules. The DNRE does not have rulemaking authority under Part 31. Until that prohibition changes, no rule changes will be pursued.